



Administrative Tribunal

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LIMITED

AT/DEC/876
31 July 1998

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 876

Case No. 977: TINKL

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, First Vice-President, presiding; Ms. Deborah Taylor Ashford, Second Vice-President; Mr. Chittharanjan Felix Amerasinghe;

Whereas, on 20 February 1997, Susanne Tinkl, a staff member of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 30 May 1997, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal, inter alia:

- "1. [To order] the Secretary-General [to pay] the amount accepted by [him] (8.5 days).
2. [To order] payment for additional 1 ½ days of accrued leave, as recommended by the JAB [Joint Appeals Board] and compensation for late payment (four years)."

Whereas the Respondent filed his answer on 26 June 1997;

Whereas the Applicant filed an additional document on 7 July 1997, stating that:

"I wish to acknowledge that I have received \$1,678.84 as payment for 8.5 days of accrued annual leave in May 1997. As I received the statement of my bank for the month of May only on 15 June 1997 I was not aware that this amount had been paid prior to my application.

Therefore, my application will be limited to plea No. 2:

"I request payment for additional 1 ½ days of accrued leave as recommended by the JAB and compensation for late payment."

Whereas, on 2 July 1998, the Tribunal put questions to the Respondent, to which he provided answers on 6 July 1998;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations Institute for Training and Research (UNITAR) on 4 March 1990, on a fixed-term appointment of one year, as a Junior Professional Officer at the P-2 level. Her appointment was extended for two further fixed-term periods of one-year each. On 5 March 1993, she was reassigned from UNITAR to the United Nations Environment Programme, Regional Office for North America, as a Liaison Officer at the P-3 level, on a fixed-term appointment, through 31 August 1993, when she separated from the Organization.

On 30 September 1993, the Applicant re-entered the service of the United Nations on a probationary appointment at the P-3 level, as an Information Officer in the Department of Public Information. On 1 September 1995, her appointment was converted to permanent.

On 9 November 1993, the Applicant wrote to the Acting Executive Director, UNITAR, claiming that on the expiration of her fixed-term contract with UNITAR on 4 March 1993, she was entitled to, inter alia, "compensation of [her] accrued annual leave (16 days)".

On 18 May 1994, the Acting Executive Director, UNITAR, acknowledged to the Chief, Payroll Unit, Office of Programme Planning, Budget and Accounts (OPPBA), that, upon the closing of UNITAR headquarters on 30 June 1993, 18 days of accrued annual leave should have been credited to the Applicant. He requested that the corresponding amount owing to the Applicant be deposited in her Chemical Bank account.

On 30 September 1994, the Chief, Payroll Unit, OPPBA, informed the Acting Executive Director, UNITAR, that after conducting an audit of the Applicant's leave attendance records, "it was revealed that the balance of her annual leave as of her separation date of 4 March 1993 was 5.5 days", for which she had been subsequently paid. This was explained to the Applicant by the Termination Unit, Payroll.

On 2 May 1995, the Applicant wrote to the Secretary-General requesting an administrative review of that decision.

On 23 June 1995, the Deputy to the Assistant Secretary-General and Director, Staff Administration, Compensation and Classification Division (SACCD), Office of Human Resources Management, on behalf of the Secretary-General, informed the Applicant that, after conducting an audit of her leave records for the period 4 March 1990 through 4 March 1993, the Office of Internal Oversight Services (OIOS) had found some errors in the computation of her leave balance. She informed the Applicant that:

"[I]n order to correct an administrative error made in connection with travel time for your home leave in June 1992, you will receive payment for two additional days of leave due you with your 30 June 1995 pay cheque. However, payment for more than two additional days of leave does not appear warranted in view of the attached audit report."

On 24 July 1995, the Applicant lodged an appeal to the Joint Appeals Board (JAB) against that decision. During the course of the JAB proceedings, the Respondent produced a communication dated 26 July 1996, from the Director, Audit and Management Consulting

Division, OIOS, stating that the Applicant should have been paid for 10 days of accrued annual leave upon her separation from UNITAR. The JAB adopted its report on 28 August 1996. Its conclusions and recommendation read as follows:

"Conclusions and Recommendation

26. In light of the above considerations, the Panel unanimously agreed that the Appellant had timely made a written claim following her separation from UNITAR on 4 March 1993.

27. In view of [the acquiescence of the Director, Audit and Management Consulting Division, OIOS], contained in his memorandum dated 26 July 1996, to [the Chief, Administrative Review Unit, SACCD], that 'an additional 10 days of annual leave should have been paid to the Appellant upon her separation from UNITAR effective 4 March 1993', the Panel unanimously recommends that the Appellant be compensated for ten days of additional annual leave."

On 18 November 1996, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed her as follows:

"The Secretary-General has examined your case in the light of the Board's report. He has taken note of the Panel's determination that you made a timely written claim regarding your annual leave entitlement following your separation from UNITAR and of its recommendation that you be compensated for ten days of additional annual leave. The Secretary-General has also taken note of an OIOS audit which took place after the preparation of the Board's report and which you have also seen. In accordance with all the documentation in file, the Secretary-General has decided that you be compensated for eight and a half days of additional annual leave.

..."

On 30 May 1997, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

The Applicant should be paid for the 1.5 days accrued annual leave that the JAB determined that she is owed, along with compensation for the four-year delay in paying her.

Whereas the Respondent's principal contention is:

The Applicant has been paid the amount that was due her, that is, for 8.5 days of accrued annual leave.

The Tribunal, having deliberated from 30 June to 31 July 1998, now pronounces the following judgement:

I. The Applicant is appealing a decision of the Secretary-General dated 18 November 1996, whereby he partially accepted the recommendation of the Joint Appeals Board (JAB) and granted the Applicant compensation for eight and a half days of annual leave. The Applicant is requesting payment of an additional one and a half days of accrued leave as recommended by the JAB and compensation for late payment.

II. In its report dated 28 August 1996, the JAB accepted the Applicant's claim that, upon her separation from UNITAR, she was entitled to be paid an additional ten days of annual leave. The JAB rejected the Respondent's submission that the Applicant had not made a written claim for her annual leave within the one-year time limit set forth in staff rule 103.15(ii).

III. The JAB maintained that the claim made by the Applicant on 9 November 1993, was well within the one-year time limit prescribed by the Staff Rules. In her claim, the Applicant argued that, on the expiration of her fixed term contract with UNITAR, she would be entitled

to compensation for her accrued annual leave. This was considered to be a timely claim according to staff rule 103.15(ii).

IV. The Tribunal was unable to determine from the record the reason why the Secretary-General reduced the amount of accrued annual leave that the JAB recommended the Applicant be paid from ten days to eight and a half days. In response to a question put by the Tribunal, the Respondent produced a memorandum dated 23 October 1996, which indicated that, in an audit by OIOS that took place after the completion of the JAB's report, it was established that the Applicant was entitled to only eight days of annual leave. The Respondent states that he granted her eight and a half days of annual leave due to "lack of clarity" in the file regarding the additional 1 1/2 day. The Tribunal decides that due to the lack of clarity and inconsistency on the part of the Administration, the Applicant should receive what the JAB recommended that she be paid, namely 10 days of accrued annual leave.

In a memorandum dated 30 December 1996, to the Applicant, the Senior Legal Advisor, Office of the Under-Secretary-General for Administration and Management, noted that the Applicant had already been informed of the results of the latest OIOS audit. Neither the Respondent nor the Applicant made these documents available to the Tribunal in their submissions. As a result of these unexplained omissions from the pleadings, the Tribunal was obliged to enquire from the Respondent, as to the reasons for his decision. Both parties are reminded that it is their duty to submit a complete record of relevant documentation supporting their respective positions. In this case, both parties failed to adhere to this standard.

V. For the foregoing reasons, the Tribunal:

1. Orders the Respondent to pay the Applicant the amount corresponding to one and a half days of accrued annual leave.

2. Rejects all other pleas.

(Signatures)

Mayer GABAY
First Vice-President, presiding

Deborah Taylor ASHFORD
Second Vice-President

Chittharanjan Felix AMERASINGHE
Member

Geneva, 31 July 1998

Maria VICIEN MILBURN
Executive Secretary